

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AUXIER WATER COMPANY

COMPLAINANT

V.

CITY OF PRESTONSBURG AND
PRESTONSBURG CITY'S UTILITIES
COMMISSION

DEFENDANTS

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) CASE NO. 96-362
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O R D E R

The City of Prestonsburg ("Prestonsburg") and the Prestonsburg City's Utilities Commission ("PCUC") have moved for dismissal of Auxier Water Company's ("Auxier") Complaint. Auxier has responded to the motion. Prestonsburg and the PCUC have replied to Auxier's response.

We deny Prestonsburg's Motion to Dismiss. Prestonsburg contends that, as it is not a party to the September 25, 1976 Contract, Auxier lacks any basis for a claim against it. Prestonsburg, however, has failed to demonstrate that it lacks any direct control over the operations of the PCUC. While contending that the PCUC is an independent body which may sue and be sued in its own name, Prestonsburg has cited no supporting legal authority for its contention. The Commission has yet to find such

legal authority.¹ Until the relationship between Prestonsburg and the PCUC is clearly established, Prestonsburg should remain as a party to this proceeding.

As to the PCUC's Motion to Dismiss the first count of Auxier's Complaint, we also deny. In Count I, Auxier seeks review of the PCUC's existing rates and a prospective rate adjustment to levels which are "fair, just and reasonable" and consistent with the September 25, 1976 Contract. The Commission finds no support on the face of Auxier's Complaint to support the PCUC's contention that a review of the PCUC's prior rates is sought. We further find that pending negotiations between Auxier and the PCUC pose no legal barrier to our consideration of Auxier's Complaint.

The PCUC has moved to dismiss Count II of the Complaint on the grounds that the Commission lacks the legal authority to enforce an agreement between the PCUC and the Kentucky Infrastructure Authority. While we agree that this Commission lacks the authority to grant such relief, no such relief is requested. Auxier instead requests that the Commission prohibit the termination of service. That relief is clearly within this Commission's authority. See Simpson County Water District v. City of Franklin, Kentucky, Ky. 872 S.W.2d 460, 465 (1994) ("Once established by contract, such service can only be abrogated or changed after a hearing before the PSC."). Accordingly, we deny the PCUC's motion to dismiss Count II.

Finally, the PCUC has moved to dismiss Count III of Auxier's Complaint on jurisdictional grounds. Finding that this Commission is without authority to establish an

¹ When Prestonsburg has discovered such legal authority, it may present that legal authority to the Commission and renew its motion to dismiss.

exclusive retail service territory for Auxier, we grant this motion. Nothing within KRS Chapter 278 authorizes this Commission to establish exclusive service territories for water utilities. See Kentucky Utilities Co. v. Pub. Serv. Com'n, Ky. 390 S.W.2d 168, 175 (1965) (stating that existing utilities do not "have any right to be free of competition.")² As neither KRS Chapter 96 nor Chapter 278 authorizes this Commission to enforce the provisions of KRS Chapter 96, the PCUC's alleged violations of KRS 96.150 are not relevant to this proceeding.

Notwithstanding Auxier's contentions to the contrary, Simpson County Water District does not confer jurisdiction upon this Commission to resolve the apparent territorial dispute. It merely provides that this Commission may regulate the rates and service provisions of contracts between city utilities and regulated utilities. The issue presented in Count III involves neither a municipal utility's rates nor service to a regulated utility; it involves municipal retail service. City of Georgetown, Kentucky v. Pub. Serv. Com'n, Ky., 516 S.W.2d 842 (1974), moreover, clearly holds that this Commission lacks the authority to determine territorial disputes between cities and regulated utilities. While the majority distinguished City of Georgetown in the Simpson County Water District decision, it did not overrule that holding.

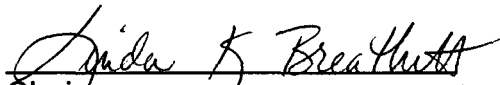
² See also Mountain Utilities, Inc. v. Equitable Gas Co., Case No. 91-316 (Ky.P.S.C. Apr. 6, 1992).

IT IS THEREFORE ORDERED that:

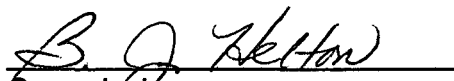
1. Prestonsburg's Motion to Dismiss Auxier's Complaint is denied.
2. The PCUC's Motion to Dismiss Auxier's Complaint is granted in part and denied in part. Count III of the Complaint is dismissed.
3. Prestonsburg and the PCUC shall satisfy the matters complained of or file a written answer to the remaining counts of Auxier's Complaint within 20 days of the date of this Order.

Done at Frankfort, Kentucky, this 2nd day of April, 1997.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director